

Add a heading for CHAPTER Env-Wq 400 as follows:

CHAPTER Env-Wq 400 GROUNDWATER PROTECTION

Renumber PART Env-Ws 421 as Env-Wq 401 and change the title to read as follows:

PART ~~Env-Ws 421~~ Env-Wq 401 BEST MANAGEMENT PRACTICES *FOR GROUNDWATER PROTECTION*

Statutory Authority: RSA 485-C:4, VII; RSA 485-C:11

Readopt with amendment Env-Ws 421.01 through Env-Ws 421.11, eff. 2-25-99 (doc. #6947), and renumber as Env-Wq 401.01 through Env-Wq 401.10, to read as follows:

~~Env-Ws 421.01~~ **Env-Wq 401.01 Purpose.** The purpose of these rules is to establish the minimum required management practices to be employed when ~~performing activities that require the use of~~ ***using, storing, or otherwise handling*** regulated substances, so that the risk of groundwater contamination is minimized.

~~Env-Ws 421.02~~ **Env-Wq 401.02 Applicability.**

(a) Subject to (b), below, these rules shall apply only to ~~potential contamination sources listed in RSA 485-C:7 that purchase~~ ***persons who use, handle, or store, or otherwise handle*** any regulated substances in regulated containers.

(b) Pursuant to RSA 485-C:11, I, these rules shall not apply to:

- (1) Potential contamination sources listed in RSA 485-C:7, II(j); or
- (2) Those regulated substances defined as pesticides under RSA 430:28, XXVI.

(c) ***These rules also shall not apply to:***

- (1) ***Aboveground and underground storage tanks regulated under Env-Wm 1401, Env-Wm 1402, or successor rules in subtitle Env-Or; or***
- (2) ***On-premise-use facilities as defined in RSA 146-E:2, III.***

(~~ed~~) Potential contamination sources shall be subject to inspections by the department in any area.

~~Env-Ws 421.03~~ **Env-Wq 401.03 Definitions.**

(a) “Department” means the New Hampshire department of environmental services.

(b) “Floor drain” means an opening in a floor that is not specifically included in an authorized discharge under one or more of the following regulatory mechanisms:

- (1) A NH groundwater discharge permit;
- (2) A registration required by Env-Ws 1500 ***or successor rules in subtitle Env-Wq;***
- (3) A national pollutant discharge elimination system permit; or

(4) A local authorization to discharge to the local wastewater treatment facility.

(c) “Impervious surface” means a surface through which regulated contaminants cannot pass when spilled. The term includes concrete and asphalt unless unsealed cracks or holes are present, but does not include earthen, wooden, or gravel surfaces or other surfaces ~~which~~ ***that*** could react with or dissolve when in contact with the substances stored on them.

(d) ***“Owner” means the owner of the facility or site on which the potential contamination source is located and, if different, the person who is responsible for the day-to-day management of the facility or site.***

(e) ***“Person” means “person” as defined in RSA 485-C:2, XI, namely “any individual, partnership, company, public or private corporation, political subdivision or agency of the state, department, agency or instrumentality of the United States, or any other legal entity.”***

(~~f~~) “Potential contamination source” means, ~~“potential contamination source” as described specified in RSA 485-C:7, I, namely, “human activities or operations upon the land surface shall be considered potential contamination sources if the activity or operation~~ ***that*** ~~poses a reasonable~~ ***foreseeable*** ~~risk that regulated contaminants may be introduced into the environment in such quantities as to degrade the natural groundwater quality.” The term includes those~~ ***Examples of potential contamination*** ~~sources are listed in RSA 485-C:7, II.~~

(~~g~~) “Regulated container” means any device in which a regulated substance is stored, transported, treated, disposed of, or otherwise handled, with a capacity of greater than or equal to 5 gallons. The term does not include fuel tanks attached to and supplying fuel to a motor vehicle ***for the normal operation of that vehicle. A fuel tank with a capacity of more than 5 gallons but less than 660 gallons and attached to, but not supplying fuel for normal operation of, a motor vehicle shall be considered a regulated container.***

(~~f-h~~) “Regulated substance” means ~~either any of the following, with the exclusion of ammonia, sodium hypochlorite, sodium, acetic acid, sulfuric acid, potassium hydroxide, and potassium permanganate:~~

(1) “Oil” ~~means “oil” as defined pursuant to~~ ***in*** RSA 146-A:2, III; ~~or~~

(2) ***Any substance that contains a regulated contaminant for which an ambient groundwater quality standard has been established pursuant to RSA 485-C:6; and***

(23) ~~Any substance listed in 40 CFR 302, 7-1-9005 edition. with the following exclusions:~~

- ~~a. Ammonia;~~
- ~~b. Sodium hypochlorite;~~
- ~~c. Sodium;~~
- ~~d. Acetic acid;~~
- ~~e. Sulfuric acid;~~
- ~~f. Potassium hydroxide; and~~
- ~~g. Potassium permanganate.~~

(~~g-i~~) “Secondary containment” means a structure, such as a berm or dike with an impervious

surface, ~~which~~***that*** is adequate to hold any spills or leaks at 110% of the volume of the largest regulated container in the storage area.

(~~h~~)***j*** “Storage area” means a place where a regulated container is kept for a period of 10 or more consecutive days.

(~~i~~)***k*** “Work sink” means a sink necessary for the performance of activities that require use of a regulated substance, ~~excluding the following instances: (1) When there are flow through process systems involving a steady, variable, recurring, or intermittent flow of materials during operation; and (2) When discharge from the sink is not authorized to discharge into the environment~~ ***that is not specifically included in an authorized discharge*** under one or more of the following regulatory mechanisms:

- ~~a~~(1) A NH groundwater discharge permit;
- ~~b~~(2) A registration required by Env-Ws 1500 ***or successor rules in subtitle Env-Wq***;
- ~~c~~(3) A national pollution discharge elimination system permit; or
- ~~d~~(4) A local authorization to discharge to the local wastewater treatment facility.

~~Env-Ws 421.04~~***Env-Wq 401.04*** Storage of Regulated Substances.

(a) ***The owner shall store a*** All hazardous wastes ~~shall be stored in compliance with applicable federal regulations~~ ***requirements*** and state requirements as specified in RSA 147-A and ~~rules adopted pursuant thereto~~ ***Env-Wm 100-1000 or successor rules in subtitle Env-Hw***.

(b) ***The owner shall store all r*** Regulated containers, ~~other than all on-premise use heating tanks or aboveground or underground storage tanks regulated under Env-Wm 1401 and Env-Wm 1402, shall be stored in an area having~~ ***on*** an impervious surface. The ***owner shall inspect the*** impervious surface ~~shall be inspected to ensure no cracks or holes exist prior to storage of any regulated containers and annually thereafter during continued use of the storage area.~~

(c) ***The owner shall secure all s*** Storage areas, ~~for other than all on-premise use heating tanks or aboveground or underground storage tanks regulated under Env-Wm 1401 and Env-Wm 1402, shall be secured against unauthorized entry by personal surveillance, physically-restricted access, or a combination of personal surveillance and physically-restricted access.~~

(d) ***The owner shall inspect all s*** Storage areas ~~shall be inspected weekly for signs of spills and/or leakage from regulated containers. The aisle space between regulated containers~~ ***which that*** cannot be moved by hand shall be of ample size to allow an inspector to determine the condition of individual regulated containers.

{ paragraph (e) has been moved and renumbered as (h)(2) }
{ paragraph (f) has been moved and renumbered as (h)(4) }
{ paragraph (g) has been moved and renumbered as (h) intro and (1) }
{ paragraph (h) has been moved and renumbered as (h)(4)d. }

(~~i~~)***e*** Each regulated container shall be clearly and visibly labeled with the chemical and trade name of the material stored within.

(~~j~~)***f*** Each regulated container shall remain closed and sealed at all times except to add or remove

regulated substances. Regulated containers equipped with spigots, valves, or pumps shall be considered closed and sealed ***when the spigots, valves, or pumps are closed or in the "off" position***, provided that drip pans are placed and maintained under the spigots, valves, or pumps.

(~~g~~**h**) Spill control and containment equipment, including, as a minimum, absorbents to pick up spills and leaks, shall be ~~readily available~~ ***located in the immediate area where regulated substances are transferred, used, or stored.***

(~~g~~**h**) Regulated containers, ~~other than on-premise use heating tanks or aboveground or underground storage tanks regulated under Env Wm 1401 and Env Wm 1402,~~ in outdoor storage areas; shall:

(1) ~~h~~**Have** secondary containment. ~~Aboveground storage tanks shall also be subject to secondary containment requirements contained in 40 CFR 112, where applicable.;~~

(~~e~~**2**) Regulated containers, ~~other than on-premise use heating tanks or aboveground or underground storage tanks regulated under Env Wm 1401 and Env Wm 1402, in outside storage areas shall b~~**Be** kept covered at all times unless substances are actively being added to ~~or removed from the regulated container or the regulated containers are in the process of being transferred to another location; . If a regulated container is kept in an area with secondary containment, the~~

(3) ***Have a*** covering ~~shall be sufficient to keep~~ ***the regulated container and the secondary containment structure*** ~~bermed areas beneath it free of rain, snow, or ice.;~~ ***and***

(~~f~~**4**) Regulated containers, ~~other than on-premise use heating tanks or aboveground or underground storage tanks regulated under Env Wm 1401 and Env Wm 1402, in outside storage areas, shall n~~**Not** be stored within any of the following ***set-backs***:

(~~1~~**a**). For surface waters, 50 feet;

(~~2~~**b**). For private wells, 75 feet; ~~or~~

(~~3~~**c**). The protective radius of any public water supply well.;

(~~h~~**d**). ***For storm drains,*** ~~Regulated containers, other than on-premise use heating tanks or aboveground or underground storage tanks regulated under Env Wm 1401 and Env Wm 1402, in outdoor storage areas, shall not be closer than 50 feet to a storm drain unless there is secondary containment as specified in Env Ws 421.04(g).~~

~~Env Ws 421.05-Env-Wq 401.05~~ ***Use of Transferring Regulated Substances.*** ***Regulated substances shall be transferred from or to regulated containers only under the following conditions:***

(a) Funnels and drip pans shall be used ~~when transferring regulated substances from or to regulated containers.;~~ ***and***

(b) Fueling or transferring ~~regulated substances from or to containers~~ shall be done only over an impervious surface.

~~Env Ws 421.06-Env-Wq 401.06~~ ***Floor Drains.*** Interior floor drains shall discharge ***only*** to a holding tank registered in accordance with Env-Ws 1500 ***or successor rules in subtitle Env-Wq.***

~~Env-Ws 421.07~~***Env-Wq 401.07*** Work Sinks. Work sinks shall discharge ***only*** to a holding tank registered in accordance with Env-Ws 1500 ***or successor rules in subtitle Env-Wq***.

~~Env-Ws 421.08~~***Env-Wq 401.08*** Holding Tanks. Holding tanks ~~which~~***that*** receive discharges from floor drains or work sinks shall be registered and maintained in accordance with Env-Ws 1500 ***or successor rules in subtitle Env-Wq***.

~~Env-Ws 421.09~~***Env-Wq 401.09*** Release Response Information.

(a) ***The owner shall post r***~~Release response information in accordance with (b), below, shall be posted~~ at every storage area.

(b) Release response information shall contain the information necessary to contact emergency response personnel, including the following:

- (1) The name of the ~~person~~***individual*** designated by the owner to be contacted if a spill occurs;
- (2) The method by which the designated ~~person~~***individual*** should be contacted ***when there is a release***, such as by phone, or in-person at the main office ~~when there is a release~~;
- (3) The procedure for spill containment; and
- (4) Emergency phone numbers including ***911 and, depending on local protocol***:
 - a. State police;
 - b. Local police and fire department;
 - c. Local hospital;
 - d. Department of environmental services;
 - e. Poison control center; and
 - f. Office of emergency management.

~~Env-Ws 421.10~~***Env-Wq 401.10*** Waivers.

(a) The rules contained in this part are intended to apply to a variety of conditions and circumstances. It is recognized that strict compliance with all rules prescribed herein might not fit every conceivable situation. Thus, persons subject to these rules may request a waiver of specific rules ~~outlined~~ in this part in accordance with this section.

(b) ***The person requesting the waiver(s)*** ~~All requests for waivers shall be submitted~~ ***the following information*** in writing to the department ~~and include the following information~~:

- (1) A description of the facility or site to which the waiver request relates, including the name, address, and identification number of the facility or site;
 - (2) A reference to the specific section of the rules from which a waiver is being sought;
 - (3) A full explanation of why a waiver is necessary;
 - (4) *Whether the waiver is needed for a limited or indefinite period of time;***
 - ~~(45)~~ A full explanation with supporting data of the alternative(s), if any, proposed to be implemented or used in lieu of the section's requirements; and
 - ~~(56)~~ A full explanation of how the proposed alternative(s), if any, is consistent with the intent of RSA 485-C and would adequately protect human health and the environment.
- (c) The department shall approve a request for a waiver upon finding that the ~~provisions~~***intent*** of RSA 485-C will be met and human health and the environment will be protected under the terms of the requested waiver. ***In granting a waiver, the department shall impose such conditions, including time limitations, as the department deems necessary to ensure that the activities conducted pursuant to the waiver will be protective of human health and safety and the environment.***
- (d) No waiver shall be granted ~~which, in the judgment of the department, contravenes the intent of RSA 485-C or these rules~~***to any requirement specified in statute unless the statute expressly allows such requirement to be waived.***
- (e) The department shall issue a written response to a request for a waiver within 90 days of receipt of the request. If the department denies the request, the reasons(s) for the denial shall be clearly stated in the written response.

~~Env Ws 421.11 Compliance by Political Subdivisions.~~

~~(a) The rules in this chapter have been developed and are intended to protect public health and the environment. All entities who engage in the activities regulated under these rules are encouraged to fully comply with the rules. Regardless of any exemption(s) from specific requirements of these rules pursuant to (b), below, all entities that engage in the activities regulated by these rules remain fully responsible for complying with all applicable statutes, such as those which prohibit the discharge of pollutants to groundwater.~~

~~(b) No specific requirement in these rules that is new, expanded or modified as compared to any requirement in effect prior to November 28, 1984, shall apply to a political subdivision unless such requirement:~~

- ~~(1) Is fully funded by the state;~~
- ~~(2) Is approved for funding by a vote of the local legislative body of the political subdivision;~~
- ~~(3) Does not necessitate local expenditures in addition to those already required for compliance with the requirement in effect prior to November 28, 1984; or~~
- ~~(4) Implements a federal statute or regulation with which the political subdivision would otherwise be required to comply by the federal government.~~

Added language in ***bold italics***
Deleted language ~~struck through~~

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Rule Section(s)	State Statute(s) Implemented
Env-Wq 401 (see also specific section listed below)	RSA 485-C:1; RSA 485-C:4, VII; RSA 485-C:11
Env-Wq 401.10	RSA 541-A:22, IV